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the right of action is regarded as if it were that of the deceased, and recovery is allowed in spite of the beneficiary's contributory negligence. *Warren* v. *Manchester St. Ry.*, 70 N. H. 352, 47 Atl. 735; *Wymore* v. *Mahaska Co.*, 78 Ia. 396. The decision of the principal case settles the New York law, which had previously been in an uncertain state, in favor of recovery by the negligent beneficiary. On theory the recovery is essentially a compensation to the next of kin, the interposition of the administrator being a mere matter of procedure. This is further illustrated by the refusal to allow one not dependent on the deceased to recover under the federal statute. See 27 HARV. L. REV. 87. To allow this recovery when the beneficiary has been guilty of contributory negligence is to compensate him at the expense of his co-tortfeasor. See 21 HARV. L. REV. 636.

FEDERAL COURTS — JURISDICTION AND POWERS IN GENERAL — JURISDICTION WHERE STATE COURT INTERPRETS FEDERAL STATUTES TOO BROADLY. — The plaintiff as administratrix sued the defendant company for damages occasioned by the death of her husband while in its service, relying upon the federal "Hours of Service Act" and "Employer's Liability Law." The defendant requested a verdict directed in its favor, which was refused. A judgment for the plaintiff was affirmed by the Supreme Court of Kentucky. 145 Ky. 427, 140 S. W. 672. The defendant now seeks a writ of error from the United States Supreme Court. *Held*, that the Supreme Court has jurisdiction. *St. Louis, I. M. & S. R. Co.* v. *McWhirter*, 33 Sup. Ct. 858.

When an action is begun in a federal court the case may be taken directly to the Supreme Court upon any constitutional question, irrespective of the lower court's decision. Act of March 3, 1891, c. 517, § 5; 26 STAT. AT LARGE, 828. But a writ of error to a state court can only be had when a party claims and is denied some federal right. U. S. REV. STAT. § 709; U. S. COMP. STAT. 1901, 575; JUDICIAL CODE, § 237. The original purpose of allowing the Supreme Court this power of review was to prevent impairment of federal authority. See *Commonwealth Bank of Ky.* v. *Griffith*, 14 Peters (U. S.), 56, 58. Where the federal right is sustained, there is no necessity for review upon this score, and it was felt that to allow either party to appeal might put too much power in the hands of the federal courts. *Gordon* v. *Caldcleugh*, 3 Cranch (U. S.), 268; *Missouri* v. *Andriano*, 138 U. S. 496. See *Hale* v. *Gaines*, 22 Howard (U. S.), 144, 160. But fear of encroachment on state power by federal courts is now past. Indeed it has been felt desirable that legislation be enacted giving both parties the right to come before the Supreme Court on a federal question, in order to secure prompt and uniform construction of federal statutes. See PROCEEDINGS OF AMERICAN BAR ASSOCIATION, 1911, 462, 469. The serious objection to the proposal is the consequent addition to the work of an already over-burdened Supreme Court. See PROCEEDINGS OF AMERICAN BAR ASSOCIATION, *supra*, 482. To justify the decision in the principal case, the statute involved would have to be said to give or secure rights to both parties. Language, in previous cases, might lay a foundation for the construction that each party has a right to have his rights under the statute construed by the Supreme Court. *Seaboard Air Line Ry.* v. *Duvall*, 225 U. S. 477, 486, 32 Sup. Ct. 790; *St. Louis, I. M. & S. R. Co.* v. *Taylor*, 210 U. S. 281, 293, 28 Sup. Ct. 616. This seems hardly a permissible construction in the light of the above cases, especially as the defendant claimed the benefit of no exception or proviso.

HISTORY OF LAW — PROCEDURE AND COURTS — RIGHT OF COURT TO HEAR NULLITY SUIT IN CAMERA. — A proceeding to nullify a marriage on the ground of the husband's impotence was heard in camera by order of the judge. Later the wife to protect her reputation secured transcripts of the evidence given and

sent them to various persons. For this she was found guilty of contempt. She now appeals to the House of Lords. *Held*, that the court had no jurisdiction to hear nullity suits in camera. *Scott* v. *Scott*, [1913] A. C. 417.

In early England the general public were required to pay a fee to gain admission to a court of law. 2 Bouvier's Law Dictionary (Rawle's edition), 548. But common-law courts are today generally open to the public. Nullity proceedings, however, were heard originally in the ecclesiastical courts, where witnesses were examined in private and their evidence taken by depositions. See SHELFORD, MARRIAGE AND DIVORCE, p. 522; CONSET, ECCLES PRACTICE, pt. 3, c. 4, § 3, (5). In 1857 such proceedings were transferred by statute to a new court of "Divorce and Matrimonial Causes." 20 & 21 VICT. c. 85, § 6. At first some doubt was expressed as to this court's right to conduct proceedings in private as the ecclesiastical courts had done. *Barnett* v. *Barnett*, 29 L. J. (P. & M.) 28 (1859); *H (falsely called C)* v. *C*, 1 Sw. & Tr. 605, 29 L. J. (P. & M.) 29 (1859). Later, however, it was decided that by § 22 of the act this new court inherited that power. See *C* v. *C*, L. R. 1 P. & M. 640 (1869); *A* v. *A*, L. R. 3 P. & M. 230 (1875); *D* v. *D*, [1903] P. 144. The present decision in turn overthrows this ruling. The House of Lords reasons that while § 22 declares the new court shall proceed as nearly as possible according to the rules of the former ecclesiastical courts, that § 46 providing that witnesses shall "be sworn and examined orally in open court" abolishes the practice of private examination and proceedings. In view of the express language of § 22, however, a better construction of § 46 would seem to be that while the cumbersome and expensive practice of taking depositions is to be changed to the more convenient *viva voce* testimony before a judge, the right of the judge to hear the testimony in private is not thereby abolished. But viewed merely as a common-law question it would seem that any court should have power at its discretion to hear in private testimony demoralizing to the public or embarrassing to a testifying witness. The House of Lords denies any such discretionary right, but lays down as a rule that private hearings should be given only in cases where the attainment of justice would otherwise be rendered doubtful. If this includes only cases of wardship, lunacy, and trade secrets, where private hearings have always been given, the rule laid down seems too narrow. Construed broadly, however, this language amounts practically to the granting of a discretionary power. Already this interpretation has been adopted by the English divorce court in a subsequent case where the public were ejected because a witness was visibly embarrassed by their presence. *Moosbrugger* v. *Moosbrugger*, 1913 T. L. R. 658. The House of Lords seems to fear that injustice may be caused by granting private hearings. But this objection is hardly valid where, as in the principal case, both parties desire such form of proceeding. In the United States divorce proceedings in many jurisdictions are regulated by statute. See *Cross* v. *Cross*, 55 Mich. 280; *Hobart* v. *Hobart*, 45 Ia. 501. But elsewhere it would seem that a judge should at least have the right in his discretion to hear such cases in private if the parties desire it.

HOMICIDE — DEFENSES — PROVOCATION — ILLICIT INTERCOURSE OF BETROTHED. — The defendant killed his betrothed in a passion aroused by her confession of illicit intercourse during their engagement. Under the instructions the jury was not permitted to reduce the crime to manslaughter on this account. *Held*, that the charge, in substance, was correct. *King* v. *Palmer*, [1913] 2 K. B. 29.

The existence of malice aforethought in a homicide case is as properly a matter of fact for the jury as the doing of the act. *Maher* v. *People*, 10 Mich. 212; see 1 EAST P. C. 222. But the English judges early laid down a rule which forbade the jury to infer absence of malice aforethought from the pro-